

Attorney Docket No.: J6819(C)  
Serial No.: 10/645,885  
Filed: August 21, 2003  
Confirmation No.: 8190

### **RESPONSE AFTER FINAL ACTION**

Sir:

The following comments are in response to the Office Action dated March 28, 2006. These comments are intended to advance the case to issue without delay.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our deposit account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18.

Claims 1, 3-4 and 7-18 were rejected under 35 U.S.C. § 112, first paragraph. The term "synthetic fibers" was considered to be new matter.

The present application under paragraph [0022] presents the following disclosure.

*"Textiles* of the present invention may be utilized as implements in personal care cleansing products which may be appropriate for single use purposes. In these products, the *textile* may be impregnated or coated with a lathering surfactant and optionally skin conditioners. Representative of this technology are disclosures found in U.S. Patent 6,280,757 (McAtee et al.), U.S. Patent 5,980,931 (Fowler et al.), WO 00/42961 (Smith) and WO 01/08542 (Cen et al.), all herein incorporated by reference. Alternatively, the *textile* can be incorporated into a sachet with at least one wall of the sachet formed from a *textile* of the present invention and optionally other walls of the sachet formed

from a variety of other water-insoluble woven or non-woven fabrics. A lathering surfactant and optionally conditioners may in dry particulate form be enclosed within the sachet. These products are exemplified and described in U.S. Patent 6,063,390 (Farrell et al.) herein incorporated by reference.” (*italics emphasis added*)

It is clear that the incorporated by reference documents provide background on textiles. The term “textile(s)” appears four times in the above-excerpt which surrounds the incorporated references. Contrary to the Examiner’s opinion, paragraph [0022] is not inserted primarily as an incorporation to show methods of impregnation or coating. The listed documents within paragraph [0022] have at least as much purpose and were intended to present further information on suitable textiles. The incorporated documents give full support to the term “synthetic fibers”.

Claims 1, 3-4, 13-15, 17 and 19-22 were rejected under 35 U.S.C. § 103(a) as unpatentable over Suskind et al. (U.S. Patent 4,808,467) equivalent to EP 0 308 320 A in view of Bouchette (U.S. Patent 6,110,848). Applicant traverses this rejection.

Applicant summarizes earlier comments outlining the unobviousness of the claimed invention against Suskind et al. in view of Bouchette. Neither Suskind nor Bouchette disclose the Air Permeability of 300 to 1000. Applicant has demonstrated special effectiveness of samples having an Air Permeability within the claimed range. Secondly, Suskind gives great emphasis to the use of wood pulp. Their invention is stated as relating to “fabric comprising a relatively high proportion of wood pulp fibers...”. See column 1 (lines 7-10). The problems, objectives and solutions in Suskind all involve issues of wood pulp fibered textile. Applicant’s claimed textile in areas above and below a central area do not contain wood pulp but consist only of synthetic fibers. In Suskind, areas surrounding the central area must all contain substantial wood pulp content. By contrast, the present invention purposefully avoids wood pulp. The claimed construction has been found highly advantageous as a

substrate for lathering surfactants fashioned in total as a cleaning implement. Suskind has a different use, namely as household cloths, food service wipes and industrial machinery wipes – none of which include lathering surfactants.

Bouchette was relied upon by the Examiner as teaching polypropylene fiber construction in a top and bottom ply of a wipe. The Examiner considered it obvious to replace the wood pulp of Suskind with the polypropylene fibers of Bouchette.

Fundamental to Suskind is the presence of substantial wood pulp in the outer plies of a wipe. Those skilled in the art seeking to operate within the context of Suskind (i.e. a wood pulp based product) would have no motivation to substitute the Bouchette polypropylene fibers into those outer layers. Indeed, Bouchette references Suskind et al. noting the inferior performance, handfeel and cost attributes of the prior art. See column, lines 29 and 35-45. The skilled chemist is thereby taught to replace but not augment Suskind with Bouchette. Yet such replacement would not result in the presently claimed outer areas of higher basis weight surrounding a central area of lower basis weight. Bouchette is totally silent with respect to this fundamental aspect of the present invention.

In the Final Office Action, the Examiner noted that applicant's claim 1 does not require the central area to consist of synthetic fibers. Applicant does not disagree to the extent of claim 1 (but not to the extent of dependent claim 17). Relative to Suskind, the issue is not the central area but the teachings that the outer areas must be of wood pulp. Applicant's claim 1 is clear that these outer areas sandwiching the central area must consist of synthetic fibers. This goes against the fundamental teaching of Suskind.

According to the Final Office Action the Bouchette reference reports a hydroentangled web of improved performance, handfeel and cost attributes. These features were said to provide motivation for maximizing these aspects in Suskind.

Applicant respectfully disagrees. If the skilled chemist followed Bouchette, the outcome would be a replacement of Suskind with Bouchette not a supplementation. The Examiner needs Suskind for its disclosure of higher basis weight areas surrounding the central area. Bouchette is totally silent with respect to this aspect of applicant's claims. The basis weight of Suskind has much to do with wood pulp fiber content being within the two outer layers sandwiching the central area. Remove the wood pulp and you significantly change (and likely invert) basis weights from outer layer to central layer.

Of interest is that Bouchette understands basis weight. This parameter is found in Table 1. The combination of hydroentangled layers is given a basis weight value. Yet tellingly there is no basis weight given to each of the separate two or three layers that constitute the sample hydroentangled textile. Bouchette simply has no appreciation that the textile must have a certain gradation of basis weight, with the higher basis weight surrounding a central area of lower basis weight.

A further argument of the Examiner is that the claimed Air Permeability would be an inherent feature of the prior art structures.

Applicant again respectfully disagrees. Air Permeability is at least as much fashioned through the process as through the types of fibers utilized. It is a measure of a certain physical characteristic of the textile. We are not dealing with mysterious parameters but a mainstream physical property. Neither Suskind nor Bouchette are concerned with providing textiles impregnated with lathering surfactants. By contrast,

the present invention seeks to present a suitable textile for use with a lathering surfactant. Attendant to the end use is necessity for textile to have a good lather release. The cited art does not appreciate the necessity for such construction because focus is upon textile strength, handfeel and cost. The prior art textiles are not engineered to achieve the claimed Air Permeability which would result in an improved lather release. Earlier noted is that Suskind does report certain Air Permeability values but these are significantly below the minimum 300 value required by the claims. One cannot see how Bouchette who is silent on Air Permeability could provide guidance toward the presently claimed invention.

In the Final Office Action, the Examiner has thought to marginalize claims 17 and 18. It was said that Bouchette teaches use of polyolefins, polyethylenes, polypropylenes, polyesters, polyamides, among other suitable synthetic fibers. Attention was drawn to column 4, lines 17-20. The Examiner interpreted such teaching as encompassing synthetic fibers in the upper and bottom areas as well as the middle layer with short synthetic fibers.

Applicant respectfully disagrees. Bouchette states that "the great advantage of my three ply web is that it comprises about 40 to 90 weight % cellulosic fiber and only about 10 to 60 weight % synthetic fibers while having the handfeel and other optimum properties of an all synthetic web". See column 3, lines 14-18. This section is taken from the Summary of the Invention. The Abstract reconfirms this view by stating that the middle ply comprises cellulosic fibers. Also see column 1, lines 10-15. There it states that "the webs of my invention have the handfeel and properties of the much more costly 100% synthetic fiber products while comprising about 40 to 90 weight % wood pulp or related cellulosic fiber". (emphasis added)

Claims 1, 3-4, 13-15, 17 and 19-22 were rejected under 35 U.S.C. § 103(a) as unpatentable over Suskind et al. (U.S. Patent 4,808,467) which is equivalent to EP 0 308 320 A in view of Bouchette (U.S. Patent 6,110,848). Applicant traverses this rejection.

The Examiner is referred to arguments against Suskind and Bouchette *vide supra*. Under this rejection the Examiner points to the Abstract in Bouchette. Therein it states that the middle layer cellulosic fiber can optimally be wholly or partially replaced with synthetic fibers.

Applicant admits that the Abstract might leave open an option for wholly synthetic fibered middle layer. Yet this possibility is in strong contrast to other sections of the text. For instance, Bouchette states that: "The webs of my invention have the handfeel and properties of much more costly 100% synthetic fiber products while comprising about 40 to 90 weight % wood pulp or related cellulosic fiber". See column 1, lines 10-15. Similar statements are found at column 2 (lines 57-59), column 3 (lines 14-16) and claim 1.

Arguendo given the most favorable light to Bouchette, the reference still suffers from being a total replacement rather than a supplement to Suskind. Bouchette criticizes Suskind and those skilled in the art would then tend to avoid the teachings of the primary reference. Even were Bouchette to supplement Suskind, there is no certainty or even any likelihood that the basis weight relationships in Suskind for wood pulp would be carried over to the Bouchette long fiber synthetics substitute. Suskind simply does not emphasize criticality of relative basis weight. And finally, the claimed Air Permeability ranges are absent from both references.

The argument that Air Permeability is inherent in the textile formed does not ring true. Applicant claims a relatively narrow range of Air Permeability. Those Air Permeability values recited in Suskind are not within applicant's claimed range. If they are not inherent in Suskind, how would they be inherent in a Suskind with Bouchette combination?

Claims 7-9, 12, 16 and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over Suskind et al. and Bouchette and further in view of Wagner et al. (U.S. Patent 5,951,991). Applicant traverses this rejection.

The Examiner has correctly noted that Suskind et al. does not disclose or teach cleansing compositions comprising a lathering surfactant for use with a non-woven hydroentangled textile.

Wagner et al. was cited for disclosing lathering surfactants combined with hydroentangled textiles.

There are countless textiles available. Wagner et al. itself provides a formidable list of suitable textiles. See column 5 (line 60) bridging to column 8 (line 42). None of the recited water insoluble substrates have a construction of any similarity to that of Suskind. Indeed, Suskind under Example 4 compares the inventive fabric favorably against a commercially available textile identified as Sontaro® from the Dupont Company. In Wagner one of the suitable substrates is also Sontaro®. See column 8 (line 4). While the Wagner reference to Sontaro® might not be a teaching away, nonetheless this indicates that those skilled in the art would not obviously be led to the Suskind textiles for use with a lathering surfactant fabric.

Neither Suskind nor Wagner et al. nor Bouchette disclose the Air Permeability of 300 to 1,000. Applicants have demonstrated the special effectiveness for samples having an Air Permeability within the claimed range. Attention is drawn to the present specification at page 13. The Table under paragraph [00032] compares Air Permeability to Lather Release. Samples I and VI with Air Permeabilities of respectively 266 and 250 had poor ratings for Lather Release. Performance began to increase to at least a fair level above these values. For instance, samples IV and V with Air Permeability values of 371 and 341 revealed fair Lather Release properties. Further improvements were seen through sample II, III and VII with respective Air Permeability of 477, 678 and 529.

Suskind appears to use the same Air Permeability ASTM D737 test as utilized by applicants. Example 4 of Suskind reports an Air Permeability value of 148. See Table III. Example VI reports resultant fabric with Air Permeability of 248. See Table V. These values are less than the minimum 300 value required by the claims. Moreover, applicants have demonstrated that even the highest Air Permeability value of Suskind, i.e. 248 will result in a poor Lather Release result. Compare applicants' Sample VI at page 13. Anyone skilled in the art would not have obviously arrived at the presently claimed invention from consideration of the Suskind teachings or their combination with Wagner and Bouchette.

Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as unpatentable over Suskind et al., Bouchette and Wagner, and further in view of Bergquist (US Patent 6,723,330 B2). Applicants traverse this rejection.

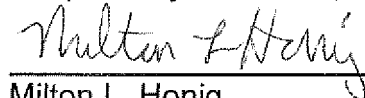
None of the three references discloses a textile having the claimed Air Permeability range. Applicants have shown special utility for a textile structured with the claimed high and low basis weight and 300 to 1000 Air Permeability. See comparative tests under the Example of the present specification.

Suskind et al. provides no suggestion or teaching that the textile disclosed therein would have any utility as a personal cleansing article. Those skilled in the art viewing the enormous literature of textile technology would not have selected the Suskind et al. fabric to deliver a formulation with surfactant or foaming ingredients.

Bergquist does not remedy the basic deficiencies of Suskind, Bouchette, Wagner and a combination thereof. See the discussion *vide supra*. For these reasons claim 10 and 11 are unobvious over the cited art.

In view of the foregoing amendment and comments, applicants request the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,



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